Office-Supreme Court, U.S.
FILED
OCT 1 1964
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 472

ROBERT P. McCULLOCH,
Plaintiff and Appellant,

vs.

CALIFORNIA FRANCHISE TAX BOARD,
Defendant and Appellee.

On Appeal from the Supreme Court of the State of California

Motion to Dismiss or Affirm

THOMAS C. LYNCH,
Attorney General of the State of California

DAN KAUFMANN
Assistant Attorney General

ERNEST P. GOODMAN
Deputy Attorney General

HARRY W. LOW
Deputy Attorney General

6000 State Building
San Francisco, California 94102

Attorneys for Appellee

BORG PRINTING COMPANY OF CALIFORNIA, 180 FIRST STREET, SAN FRANCISCO 5

TABLE OF CONTENTS

	Page
Statement of the Case and the Facts	2
Issue Presented	4
This Appeal Does Not Present a Substantial Federal Question	5
A. There Is No Violation of the Due Process Clause Since There Is Sufficient Nexus Between the Beneficiary and the Trust During the Period of Accumulation to Tax the Income When Distributed to Appellant in California	5
B. The California Scheme for Taxation of Trusts Is Fair and Reasonable. The Scheme Is Designed to Prevent Accumulation of Income Outside the State of California for Tax-Free Distribution	12
C. The California Supreme Court Did Not Create a "Throw-Back." There Is No Violation of Due Process or Equal Protection	13
Conclusion	15
Appendix	

TABLE OF AUTHORITIES CITED

Cases	Pages
Anderson v. Wilson, 289 U.S. 20 (1933)	13
Blackstone v. Miller, 188 U.S. 189	12
Curry v. McCanless, 307 U.S. 357	10, 11
Greenough v. Tax Assessors, 331 U.S. 486	6, 7, 8, 10
Guaranty Trust Co. v. Virginia, 305 U.S. 19	5, 6, 11
Hardy v. Hardy, 164 Cal. App. 2d 77 (hearing denied by Sup. Ct. Nov. 2, 1958)	8
Lawrence v. State Tax Commission, 286 U.S. 276	5
Maguire v. Trefry, 253 U.S. 12	5
McCulloch v. Franchise Tax Board, 61 Cal. 2d ..., 390 P.2d 412	3, 4, 5, 7, 12, 13
McElroy v. McElroy, 32 Cal. 2d 828	8
Miller Bros. v. Maryland, 347 U.S. 340	6
Phillips v. Comm'r of Internal Revenue, 283 U.S. 589	5
Scripto, Inc. v. Carson, 362 U.S. 207	6
State Tax Commission v. Aldrich, 316 U.S. 174	12
Stewart v. Pennsylvania, 312 U.S. 649	11
West Publishing Co. v. McColgan, 27 Cal. 2d 705 (aff'd. 328 U.S. 823)	8
Wisconsin v. J. C. Penney Company, 311 U.S. 435	6, 12

Statutes and Rules	
Internal Revenue Service Code, Sections 665-668	14
California Revenue and Taxation Code (1951	
Section 18101	2, 11
Sections 18102-18104	3
Section 18106	3, 13, 14, 15
1964 Personal Income Tax Law, Sections 17771-17777	14
United States Supreme Court Rule 16	1

TEXTS

Pages

Austin Scott, Spendthrift Trusts and the Conflicts of Laws, 77 Harv. L. Rev. 845 8

Sen. Rep. No. 1622, 83rd Cong., 2nd Sess., p. 85 14

Traynor, State Taxation of Trust Income, 22 Iowa L. Rev. 268 12

In the Supreme Court of the United States.

OCTOBER TERM, 1964

No. 472

ROBERT P. McCULLOCH,
Plaintiff and Appellant,

vs.

CALIFORNIA FRANCHISE TAX BOARD,
Defendant and Appellee.

On Appeal from the Supreme Court of the State of California

Motion to Dismiss or Affirm

Appellee, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, hereby moves the Court to dismiss this appeal or to affirm the judgment of the California Supreme Court for the following reason: There is no substantial federal question presented as a basis of jurisdiction in this Court, inasmuch as the questions presented have been foreclosed by previous decisions of this Court.

STATEMENT OF THE CASE AND THE FACTS

This case concerns a tax collected from appellant upon his receipt of accumulated income in California. The appellant is the sole beneficiary and one of three co-trustees of a trust. From this trust he received a distribution of accumulated income in 1951 which is the subject of this dispute. The appellant and his family were residents of California from 1946 to 1951.

There were two other trustees, namely: appellant's brother, a resident of Missouri; and the St. Louis Trust Company, a Missouri corporation. The corporate trustee was responsible for the custody and accounting of the income and corpus in the trust.

Under the terms of the trust, it was within the discretion of the trustees to distribute some or all of the income as it was earned. Undistributed income was to be accumulated and then distributed when the appellant reached age forty (on May 9, 1951), providing he was financially responsible. Upon distribution the trust was to terminate.

This case puts in issue California's comprehensive system for taxation of all trusts.[1] The California law seeks to tax all income, including that income accumulated for the benefit of persons with contingent interests and income which is distributed or accumulated at the discretion of the fiduciary. (Revenue and Taxation Code section 18101).[2] California law requires "the trust" to pay taxes due on the income

1. The relevant California Revenue and Taxation Code sections 18101 to 18106 are set forth in Appendix A.

2. All references are to the California Revenue and Taxation Code of 1951 unless otherwise specified.

earned. Income is taxable if the fiduciary or the beneficiary is a resident, regardless of the residence of the settlor. If there is more than one beneficiary or fiduciary and only some of the beneficiaries or fiduciaries are residents of California, the income taxable by California is apportioned. (Sections 18102-18104.) Section 18106[3] provides:

> "If, for any reason, the taxes imposed on income of a trust which is taxable to the trust because the fiduciary or beneficiary is a resident of this state are not paid when due and remain unpaid when such income is distributable to the beneficiaries . . . such income shall be taxable to the beneficiaries when distributable to them. . . ."

Section 18106 provides that if the trustees of the trust fail to pay the tax for the trust annually as the income is earned, the California resident beneficiary becomes liable for such tax when the previously earned income is distributed to him. The distributee-beneficiary bears the statutory liability, as a transferee, for the taxes which were due from the trust. The beneficiary must pay the tax that the trustee should have paid on behalf of the trust as that income was earned. (*McCulloch v. Franchise Tax Board*, 61 Cal. 2d ..... ; 390 P.2d 412, 416.)

The trust did not pay any income taxes to the State of California during the years 1946 to 1950, but did pay some income taxes to Missouri. The accumulated income distributed in 1951 was included in appellant's 1951 taxable income and he was assessed accordingly. Pursuant to the California Income Tax Law, the income taxes paid to Missouri were credited to the beneficiary's liability of 1951.

---

3. The California Supreme Court has described section 18106 as "one of the foundation stones in the structure of rules applying California income taxes to trust income." *Id.*, 61 Cal. 2d ..... ; 390 P.2d 412, 416.

Appellant paid the California income taxes assessed and thereafter sued for a refund in the Los Angeles Superior Court. The Superior Court ruled against the appellant, from which judgment he appealed. The matter was ultimately heard by the California Supreme Court.

The California Supreme Court, in a unanimous decision, ruled that the accumulated income was taxable to the beneficiary upon his receipt thereof in 1951. The Supreme Court rejected the appellant's constitutional arguments. The Supreme Court held that based upon the proper construction of section 18106, the amount taxable to the beneficiary should be no greater than the amount the trust would have paid had the trust paid income tax to California each year while the income was being earned from 1946 to 1950. The Supreme Court remanded the case to the Superior Court to compute the tax accordingly. (*McCulloch v. Franchise Tax Board, supra.*)

After denial of the petition by the appellant for rehearing in the California Supreme Court this appeal follows.

ISSUE PRESENTED

Does the appellant's residency in California in his capacity as the contingent beneficiary and as one of three trustees, provide sufficient nexus to income accumulated by an out-of-state trust so as to allow California to impose a tax upon the appellant's receipt of that income in California?

Appellee contends that the California Supreme Court correctly applied the decisions of this United States Supreme Court in determining that there was sufficient nexus by reason of the appellant's residency.

This Appeal Does Not Present a Substantial Federal Question.

A. THERE IS NO VIOLATION OF THE DUE PROCESS CLAUSE SINCE THERE IS SUFFICIENT NEXUS BETWEEN THE BENEFICIARY AND THE TRUST DURING THE PERIOD OF ACCUMULATION TO TAX THE INCOME WHEN DISTRIBUTED TO APPELLANT IN CALIFORNIA.

The California Supreme Court carefully analyzed the numerous United States Supreme Court cases that have dealt with the question of "nexus." The California Supreme Court concluded, "We find no reason in constitutional principles or in practical application of such principles why the tax founded upon residence of the beneficiary should not be sustained." (*Id.* 61 Cal. 2d .....; 390 P.2d at 418.) As a second constitutional ground for upholding the tax, the California Supreme Court concluded, "But plaintiff in the instant case was simultaneously beneficiary and a trustee. No possible doubt attaches to California's constitutional power to tax plaintiff as a trustee. His secondary role as a trustee reenforces the independent basis of taxing plaintiff as beneficiary." (*Id.* 61 Cal. 2d .....; 390 P.2d at 420.)

Admittedly, this case under *these facts* does present a novel question, but the decisions of the United States Supreme Court by analogy have clearly upheld taxes similar to the one based upon the interest of this beneficiary. If the State of California can impose a tax upon this "out-of-state trust" during accumulation, it can collect this tax from the beneficiary when he receives this distribution. (*Phillips v. Com'r of Internal Revenue*, 283 U.S. 589.) It has been held that a state may tax the income *received* by the resident beneficiary from the trust despite the fact that the trust income is earned outside that state. (*Maguire v. Trefry*, 253 U.S. 12; *Lawrence v. State Tax Commission*, 286 U.S. 276; *Guaranty Trust Co. v. Virginia*, 305 U.S. 19.)

This Court has held that a state may tax persons, things or transactions which have "out-of-state elements" if the taxing state has some "minimum connection" to the thing taxed. This "minimum connection" is determined by the nature and extent of the activities of the taxpayer in the taxing state or in the *benefits of protection afforded the taxpayer to the thing taxed.* (*Scripto, Inc. v. Carson*, 362 U.S. 207; *Miller Bros. v. Maryland*, 347 U.S. 340; *Wisconsin v. J. C. Penney Co.*, 311 U.S. 435, 444; *Greenough v. Tax Assessors*, 331 U.S. 486; *Guaranty Trust Co. v. Virginia*, 305 U.S. 19.)

California offered many "benefits and protection" to the appellant as the beneficiary and had many "connections" with the accumulated income and the trust. The California Supreme Court enumerated a few of these "benefits and protection."

> "California grants the beneficiary the interim protection of its laws so that he may ultimately obtain the benefit of the accumulated income. Nor was plaintiff protected only in his personal welfare by the State of California which extended the shelter of its governmental institutions over plaintiff's legal interests as well. If plaintiff had failed to survive to age 40, his trust interest would have been distributed to his heirs who were related by blood to the settlor, special provisions being made for plaintiff's wife; these persons, his family, resided in California. Plaintiff and his family during their residence here thus enjoyed the protection of California's courts in the enforcement of the spendthrift provisions which insured against improvident or involuntary transfers of the equitable interests. (*Sinclair v. Crabtree* (1931) 211 Cal. 524; *Kelly v. Kelly* (1938) 11 Cal. 2d 356, 365.) Plaintiff further could enlist the aid of California courts to enforce his equitable rights or redress trustee misconduct. (See *McElroy v. McElroy* (1948) 32 Cal. 2d

828, 831, *Estate of Knox* (1942) 52 Cal. App. 2d 338, 348.)

"California thus became entitled to claim reciprocal obligations for protection which it has afforded . . ." (*McCulloch* case, 61 Cal. 2d ....., 390 P.2d at 419.)

Moreover, from 1946 to 1951, appellant had the right to receive distributions from income or corpus. These distributions were at the discretion of the trustees with fixed amounts of substantial size going to him at ages 25, 30 and 35. Each year from 1946 to 1951, income ranging from $125,681.00 to $263,785.81, was distributed to appellant. Upon a proper showing to a California court, appellant might have demanded an accounting or more money for business, education, support and reasonable recreation prior to final distribution and termination of the trust.

Since appellant was one of the trustees, the availability of California courts afforded benefits and protections to him prior to termination of the trust in 1951. (See *Greenough* case discussed below.) In fact, the real practical power in the management and control of the trust was in the natural trustees, appellant and his brother. They had the power to remove and substitute the corporate trustees. As the beneficiaries and co-trustees they had the ownership and control of the trust.

Appellant as the beneficiary could have made use of the California courts to redress wrongs, to enjoin acts or enforce contracts against third parties dealing with the trust to the extent such activities arose in California where the trustee refuses to act. Such actions could have, for example, concerned the California municipal bonds and stocks of California corporations. When appellant reached age 35, on May 9, 1946, he could have demanded payment of $350,000 from the trust. Other suits might also have been brought

against appellant as trustee of the accumulated income. Appellant could have requested an accounting through the courts in this State. (See *McElroy v. McElroy*, 32 Cal. 2d 828; *Hardy v. Hardy*, 164 Cal. App. 2d 77 (hearing denied by Sup. Ct. Nov. 2, 1958.) See also, Austin Scott, *Spendthrift Trusts and the Conflicts of Laws*, 77 Harv. L. Rev. 845.)

Under the provisions of the trust, had appellant not survived to age 40, the accumulated income and the corpus would have gone to appellant's children who were related to the settlor by blood, with special provisions for appellant's wife. Appellant's children as blood heirs would have been the beneficiaries, enjoying substantially the same rights and benefits under the trust had appellant lived. During the period of accumulation the trustees could also make reasonable expenditures and payments for the maintenance and pleasure of the beneficiary or in some instances for "their families or those dependent upon them."

Availability of California courts is considered as a significant factor in sustaining a tax against due process objections. See *West Publishing Co. v. McColgan*, 27 Cal. 2d 705, 713, (aff'd 328 U.S. 823), where the court attributed significance to the fact California "maintains courts in which plaintiff enforces payment for the sale of its publication. . . ."

Appellant raises arguments similar to those heretofore rejected by this Court in *Greenough v. Tax Assessors*, 331 U.S. 486 (1946). In that case, Rhode Island was allowed to apply a property tax to a proportionate share of the intangible assets of the trust where the active trustee was in New York, the beneficiaries were all in New York, the evidences of ownership were kept in New York, and the trust "administration" took place in New York. The "connection" with Rhode Island, the taxing state, was that one of the

trustees resided in Rhode Island. Although the case dealt with a property tax rather than an income tax, it is at once apparent from the following quotation that the same "benefits and protection" of the appellant and the accumulated income are present in this case. It is stated by this Court at page 495:

> "The Supreme Court of Rhode Island considered the argument that the laws of the state afforded no benefit or protection to the residing trustee. Although nothing appeared as to any specific benefit or protection which the trustee had actually received, it concluded that the state was 'ready, willing and capable' of furnishing either 'if requested.' A resident trustee of a foreign trust would be entitled to the same advantages from Rhode Island laws as would any natural person there resident. *Greenough v. Tax Assessors, supra*, 488, 47 A.2d at 631. There may be matters of trust administration which can be litigated only in the courts of the state that is the seat of the trust. For example, in the case of a testamentary trust, the appointment of trustees, settlement, termination and distribution under the provisions of the trust are to be carried out; normally, in the courts of decedent's domicile. . . . But when testamentary trustees reside outside of the jurisdiction of the courts of the state of the seat of the trust, third parties dealing with the trustee on trust matters or beneficiaries may need to proceed directly against the trustee as an individual for matters arising out of his relation to the trust. Or the resident trustee may need the benefit of the Rhode Island law to enforce trust claims against a Rhode Island resident. . . ."

The Supreme Court determined that the situs of at least one-half of the trust *res* was in Rhode Island. The benefits that would be afforded the trust provided the due process connection for property taxation.

In the present case one trustee and the beneficiary are residents of California, whereas in *Greenough* only one trustee was a resident of the taxing state. The owners of the equitable and a legal interest in the accumulated income and the trust were in California. Actual distribution of the income was in this State. The appellant as trustee had powers and duties with respect to the accumulated income. Therefore, this is even a stronger case of due process "minimum connection" than the *Greenough* case.

Further support for the California tax laws is found in *Curry v. McCanless*, 307 U.S. 357. In *Curry*, Tennessee was allowed to tax the transfer at death of intangibles held by an Alabama trustee in Alabama where the decedent, a Tennessee resident, retained certain controls over the disposition of the intangible property. The decedent was the settlor of the trust. The resident settlor reserved a power of appointment over certain trust assets which was never exercised. This was a potential source of wealth held in Tennessee which could be taxed. It is stated at page 366:

> ". . . Obviously, as sources of actual or potential wealth—which is an appropriate measure of any tax imposed on ownership or its exercise—they cannot be disassociated from the persons from whose relationships they are derived. These are not in any sense fictions. They are indisputable realities."

and at page 370:

> ". . . The decedent's power to dispose of the intangibles was a potential source of wealth which was property in her hands from which she was under the highest obligation, in common with her fellow citizens of Tennessee, to contribute to the support of the government whose protection she enjoyed. . . ."

Appellant, as the beneficiary, received actual distribution of all the accumulated income in 1951, and this is far greater

than any potential power the decedent had in the *Curry* case. During accumulation, appellant, together with his co-trustees over whom he had effective and practical control, also had power to pay, control or allocate more distributions of the income for himself as beneficiary.

In addition, this Court has held that the residency of a beneficiary affords the "minimum connection" to impose a property tax on the beneficiary's equitable interest even though the property is physically in another state. (*Stewart v. Pennsylvania*, 312 U.S. 649). Furthermore, an income tax on income under the control of the resident beneficiary, though undistributed, may be taxed by the resident state. (*Guaranty Trust v. Virginia*, 305 U.S. 19.)

Appellant argues that his uncertainty of receiving the accumulated income should prevent California from imposing the tax. The technical nature of the future interest of a beneficiary is not the controlling factor for purposes of taxation. The important fact is that the equitable interest was held by an identifiable person who was a resident of California (Section 18101). As stated by the California Supreme Court,

> "California thus became entitled to claim reciprocal obligations for 'protection which it has afforded . . .' and 'benefits which it has conferred by the fact of being an orderly, civilized society. . . .' The simple but controlling question is whether the state has given anything for which it can ask return . . . The fact that a tax is contingent upon events brought to pass without a state does not destroy the nexus between such a tax and transactions within a state for which the tax is an exaction.' (*Wisconsin v. J. C. Penney Co.* (1940) 311 U.S. 435, 444-445 [61 S. Ct. 246, 85 L. Ed. 267, 270-271, 130 A.L.R. 1229, 1233].)"

The fact that this state stands ready and willing to grant benefits and protection provides the nexus. (*State Tax Commission v. Aldrich*, 316 U.S. 174; 180; *Blackstone v. Miller*, 188 U.S. 189, 205.) California's possibility, readiness or willingness to benefit or to protect the beneficiary in his relationship to the trust and the income provided the "minimum connection" for taxation under the due process clause.

B. THE CALIFORNIA SCHEME FOR TAXATION OF TRUSTS IS FAIR AND REASONABLE. THE SCHEME IS DESIGNED TO PREVENT ACCUMULATION OF INCOME OUTSIDE THE STATE OF CALIFORNIA FOR TAX-FREE DISTRIBUTION.

Due process is satisfied if the statutory scheme which imposes taxation is fair and reasonable and in line with practical operation. (*Wisconsin v. J. C. Penney Company*, 311 U.S. 435.) The California system for taxation of trusts is designed to prevent accumulation of income outside the state for tax-free distribution to beneficiaries who are residents of this state. (See Traynor, *State Taxation of Trust Income*, 22 Iowa L. Rev. 268, 271.) As the California Supreme Court noted, "The transferee tax thus levied assures this State that resident beneficiaries of the trust administered elsewhere obtain no special advantage over California taxpayers." (*McCulloch* case, 61 C.2d ..... ; 390 P.2d at 420). A California resident whose wealth accumulates under the administration of an out-of-state trustee should not contribute less to the support of this state than would his fellow citizen whose wealth is managed by a local trustee.

The California scheme provides for no additional penalties or interest for the failure of the trust to pay the tax. There is no double taxation because California law provides for full credit for any income taxes paid by the trustee to Missouri. The California tax on appellant is no greater than that which any other beneficiary of a local trust would pay.

The ultimate liability of taxation is borne by the beneficiary who has the equitable interest in the income, whether accumulated or distributed. (*Anderson v. Wilson*, 289 U.S. 20, 27 (1933).) Adoption of the appellant's argument would unnecessarily lead to discrimination in favor of beneficiaries of out-of-state trusts.

C. THE CALIFORNIA SUPREME COURT DID NOT CREATE A "THROWBACK." THERE IS NO VIOLATION OF DUE PROCESS OR EQUAL PROTECTION.

The appellant claims that the California Supreme Court applied a "throwback" which was enacted after the period here involved. (Appellant's Jurisdiction Statement, p. 21) The California Court made no reference, nor in any way depended upon such a "throwback" provision. The court's decision set forth the meaning of section 18106. Section 18106 "imposes upon the beneficiary the *tax liability* which attaches to 'such income,'" which is taxable to the trust. The California Court states:

> "the statute indicates only that if trust income taxes remain unpaid, these taxes are to be met by the beneficiary when the assets are distributed to him." (*McCulloch* case, 390 P.2d at 417.)

The California Court declared that the Legislature, by this section, did not intend to treat the whole accumulation as income in the year of distribution, but only "such income", tax liability that was due from the trust, *is now due* from the beneficiary upon his receipt.

The Court reaches a reasonable interpretation which reduces the heavier tax burden of taxing the entire distribution in the year of receipt of the beneficiary. The Franchise Tax Board had argued throughout this extended litigation that the California Legislature could have, in section 18106,

treated the total distribution as taxable in the year of receipt without violation of due process. In the same way, all the capital gains from sale of an appreciated asset could be taxed at one time in the year the gains are realized or received. There is no constitutional objection to such enactment.

A fortiori there is no constitutional objection to the statutory interpretation which limits such lump sum taxation. Appellant claims that the construction of the California Court violates the equal protection clause since "it subjects an out-of-state trust to a throwback rule . . . without subjecting local trusts thereto . . . ." (Jurisdictional Statement, page 22.) It claims discrimination. The facts refute this. Local trusts would have been required to pay the taxes as the income was earned from sources within the state. The taxes should have and would have been paid each year as earned by the local trust. In this case the trust or the appellant is required to pay an equal amount of tax. No greater burden is placed upon him or the trust than that placed upon local trusts or local beneficiaries. The throwback rule (found in sections 17771-17777, 1964 Personal Income Tax Law, and Internal Revenue Service Code sections 665-668) was enacted as a loophole closing measure. (See Sen. Rep. No. 1622, 83rd Cong., 2nd Sess., p. 85.) The loophole closed was that of shifting income taxes from a high tax bracket beneficiary to lower tax bracket trusts. The operation of the throwback rule prevents this shifting. The beneficiary pays the tax according to the amount he would have paid if the income had been distributed on each of the preceding years.

Whatever similarity there may be between the California Supreme Court's construction of 18106 and these "throwback rules" it is clear the California Supreme Court was not

analogyzing to these rules but was merely interpreting section 18106. In construing section 18106 there was no issue before the court involving the shifting of tax between the beneficiary and the trust. Rather, the issue was how much tax is due from a beneficiary where the trust had paid no tax. Appellant's attempt to characterize the court's holding as a judicially created throwback rule is without merit.

CONCLUSION

Inasmuch as appellant's contentions have been foreclosed by prior decision of this Court, we respectfully submit that this appeal should be dismissed, or in the alternative that the judgment of the Supreme Court of California should be affirmed.

Dated: September 30, 1964.

Respectfully submitted,

THOMAS C. LYNCH,
Attorney General of the State of California

DAN KAUFMANN
Assistant Attorney General

ERNEST P. GOODMAN
Deputy Attorney General

HARRY W. LOW
Deputy Attorney General

Attorneys for Appellee

(Appendix Follows)

Appendix A

California Statutes
(Revenue and Taxation Code of 1951)

Section 18101:

"The taxes imposed by this part upon individuals apply to the income of estates or of any kind of property held in trust (other than so-called Massachusetts trusts), including:

"(a) Income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust.

"(b) Income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of an infant which is to be held or distributed as the court may direct.

"(c) Income received by estates of deceased persons during the period of administration or settlement of the estate.

"(d) Income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated."

Section 18102:

"Except as otherwise provided in Articles 2 and 4 of this chapter, the income of an estate or trust is taxable to the estate or trust. The tax applies to the entire net income of an estate, if the decedent was a resident, regardless of the residence of the fiduciary or beneficiary, and to the entire net income of a trust, if the fiduciary or beneficiary is a resident, regardless of the residence of the settlor."

Section 18103:

"Where the taxability of income under this chapter depends on the residence of the fiduciary and there are two

or more fiduciaries for the trust, the income taxable under Section 18102 shall be apportioned according to the number of fiduciaries resident in this State pursuant to rules and regulations prescribed by the Franchise Tax Board."

Section 18104:

"Where the taxability of income under this chapter depends on the residence of the beneficiary and there are two or more beneficiaries of the trust, the income taxable under Section 18102 shall be apportioned according to the number and interest of beneficiaries resident in this State pursuant to rules and regulations prescribed by the Franchise Tax Board."

Section 18105:

"Taxes on income of an estate or trust which is taxable to the estate or trust are a charge upon the estate or trust and shall be paid by the fiduciary."

Section 18106:

"If, for any reason, the taxes imposed on income of a trust which is taxable to the trust because the fiduciary or beneficiary is a resident of this State are not paid when due and remain unpaid when such income is distributable to the beneficiaries, or in case the income is distributable to the beneficiaries before the taxes are due, if the taxes are not paid when due, such income shall be taxable to the beneficiaries when distributable to them except that in the case of nonresident beneficiaries such income shall be taxable only to the extent it is derived from sources within this State."